

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

CAVANTA D. MCLILLY, DEONDRICK D.
MCLILLEY, LOUIS C. MCLILLEY, JR., and
ORRACCIOUS Q. BROWN,

Defendants-Appellees.

UNPUBLISHED

December 20, 2002

No. 234577

Genesee Circuit Court

LC Nos. 00-007098-FC

00-007099-FC

00-007100-FC

00-007507-FC

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

WILDER, J., (*concurring*).

I concur in the analysis and conclusion of the lead opinion. I write separately to state that in addition, I would find that the trial court erred by granting the motion to suppress the statements heard by Captain Barksdale over the cell phone. The trial court found that these statements were hearsay statements. The trial court also found, relying on *People v Sobczak*, 344 Mich 465, 469-470; 73 NW2d 921 (1955), that it was not reasonable to infer the existence of a conspiracy from these statements and that the introduction of these statements before the introduction of independent proof of the conspiracy would be unfairly prejudicial.

This Court reviews a trial court's factual findings on a motion to suppress evidence to determine whether they are clearly erroneous. *People v McKinney*, 251 Mich App 205, 207; 650 NW2d 353 (2002); MCR 2.613(C). A trial court's ultimate conclusion on a motion to suppress evidence is reviewed de novo. *McKinney*, *supra* at 207. Here, the trial court clearly erred by finding that the statements heard over the cell phone were inadmissible. Although the statements were hearsay, they were evidence of the state of mind of the declarants and thus admissible as a hearsay exception under MRE 803(3). Because the statements were relevant and admissible, therefore, the trial court also erred as a matter of law in suppressing the statements as being insufficient to permit an inference of conspiracy.

In *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002), the Michigan Supreme Court held that if evidence is relevant and otherwise admissible, it does not matter that the evidence gives rise to multiple inferences or that an inference gives rise to further inferences. The Court further held that the fact-finder should be permitted to determine what inferences may be fairly drawn from this logically relevant evidence and what weight should be accorded those

inferences. *Id.* Based on *Hardiman*, I would hold that on remand the statements overheard by Captain Barksdale are also admissible in the prosecution's case as evidence of the conspiracy between the defendants and that it is for the finder of fact to determine whether the evidence is sufficient to prove the alleged conspiracy.

/s/ Kurtis T. Wilder